



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0170]

RIN 1625-AA08

Special Local Regulation; Galveston Bay, Kemah, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary special local regulation in Galveston Bay in the vicinity of Kemah, Texas. This temporary special local regulation is necessary to provide for the safety of swimmers participating in the Memorial Hermann Kemah Triathlon. All vessels will be prohibited from transiting in or near the area except as specifically authorized by the Captain of the Port or a designated representative.

DATES: This rule is effective on April 29, 2012 from 6 a.m. until 12 noon.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0170 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0170 in the "Keyword" box, and then clicking "Search." They are also

available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Margaret Brown, Coast Guard; telephone 713-678-9001, e-mail Margaret.A.Brown@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The intended date for this charitable event is April 29, 2012. Publishing an NPRM is impracticable because it

would delay the effective date for this special local regulation.

This event and special local regulation are part of a Direct Final Rule (DFR) creating a list of annually recurring special local regulations under 33 CFR part 100, taking place in the Eighth Coast Guard District. The DFR published in the Federal Register on March 1, 2012, (77 FR 12456), provides for a comment period and is scheduled to go into effect May 30, 2012 which is after the April 29, 2012 scheduled date for this event. A comment period is provided in the DFR, but awaiting the DFR effective date and delaying or foregoing the special local regulation needed for the safety of triathlon participants would be contrary to public interest.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Immediate action is needed to protect swimmers participating in the Memorial Hermann Kemah Triathlon.

#### Basis and Purpose

The swimming portion of the Memorial Hermann Triathlon will feature swimmers entering the water from a vessel and swimming approximately one mile to shore. This special local regulation provides a protected area for the swimmers

from recreational and other vessels that might be in the area.

#### Discussion of Rule

The Coast Guard is establishing a temporary special local regulation in Galveston Bay. The area regulated begins at Latitude 29°32'38.02"N, Longitude 095°00'58.30"W thence east to Latitude 29°32'46.73"N, Longitude 094°59'50.36"W, thence south to Latitude 29°32'36.98"N, Longitude 094°59'50.32"W, thence west to 29°32'30.86"N, Longitude 095°00'56.91"W thence along the shoreline to the point of beginning. This rule is established to allow for the safety of swimmers participating in a triathlon. Vessels will not be allowed to transit within the designated area immediately before, during, and after the swim portion of the triathlon.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under

section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This regulation will only be in effect for six hours. Notifications to the marine community will be made through broadcast notice to mariners and electronic mail. The special local regulation will not affect channel navigation and will only affect few recreational vessels. The impacts on routine navigation are expected to be minimal.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not affect small entities because the special local regulation does not inhibit navigation. Recreational vessels may navigate around the restricted area. If you are a small business entity and are significantly affected by this

regulation please contact LT Margaret Brown, Coast Guard Sector Houston-Galveston, at (713) 678-9001.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive

Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.



### Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. Under figure 2-1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and  
Recordkeeping Requirements, Waterways.

For the reasons discussed in the preamble, the Coast  
Guard amends 33 CFR part 100 as follows:

Part 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to  
read as follows:

Authority: 33 U.S.C. 1233.

2. A new temporary § 100.35T08-0170 is added to read as  
follows:

§ 100.35T08-0170 Special Local Regulation; Galveston Bay,  
Kemah, TX

(a) Location. Under this temporary rule, the  
following area is a regulated area: Galveston Bay,  
beginning at Latitude 29°32'38.02"N, Longitude  
095°00'58.30"W thence east to Latitude 29°32'46.73"N,  
Longitude 094°59'50.36"W, thence south to Latitude  
29°32'36.98"N, Longitude 094°59'50.32"W, thence west to  
29°32'30.86"N, Longitude 095°00'56.91"W thence along the  
shoreline to the point of beginning.

(b) Enforcement date. This temporary rule will be  
enforced from 06:00 a.m. to 12:00 noon on April 29, 2012.

(c) Special local regulations. (1) In accordance with  
the general regulations in § 100.35 of this part, entry into

this area is prohibited immediately before, during and immediately following the swimming portion of this triathlon event.

(2) Vessels shall not transit through or within the restricted area during the swimming portion of the triathlon event.

(3) No vessel shall anchor, block, loiter, or impede the swimming portion of this triathlon event.

(4) Persons or vessels requiring deviation from these restrictions must request permission from the Captain of the Port Houston-Galveston, or a designated representative. They may be contacted at "Sector Houston-Galveston" on VHF-FM Channels 16, or by phone at (713) 671-5113. Requests to deviate from these restrictions will be reviewed on a case-by-case basis.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) Informational Broadcasts. Notifications of changes in enforcement periods and changes to this special

local regulation will be made through Vessel Traffic Services and broadcast notice to mariners.

Dated: April 16, 2012

J. H. WHITEHEAD  
Captain, U.S. Coast Guard  
Captain of the Port Houston-Galveston

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